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STATE SUPERVISION OF PROBATION

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A new method and a new spirit has been brought about in criminal jurisprudence by the development of the probation system. The method has been grafted upon an antiquated criminal court system, producing profound changes. Developing ideals of social service and social diagnosis have produced the probation method and are in turn developed and fostered by its application. And yet the application of the probation system in courts throughout the United States has been as various and inconsistent as one could well imagine. Probation has grown up here and there, in some cases spontaneously, in other cases as a borrowed idea. No two states have the same system or law. Within most states there is little uniformity of method and only a partial application of the law. Some states have a law but practically no real probation work in their courts.

The first probation law in any country was passed in Massachusetts in 1878. This was a revolutionary enactment, providing for a salaried probation officer; giving him the widest powers to investigate and recommend to the court; granting to the court the power to place on probation with no limitations whatever upon the nature of the offense or the previous convictions or age of the offender; leaving the length and conditions of probation entirely to the court's discretion.

The Massachusetts experiment was successful and the probation idea spread and developed rapidly in other states until today every state in the United States and, in addition, most foreign countries have probation laws. The example of the pioneer state has not, however, been followed in all respects. One of these is in the matter of allowing unlimited judicial discretion in applying probation. The statutes of many states have attempted to circumscribe narrowly by law the offenses for which persons may be placed on probation. In fifteen states the law applies only to children's cases. In others adults are admitted to probation only for a first offense or only in minor cases. Experience has shown that these attempts to regulate probation have failed of their purpose. The basic theory of probation is that the nature of the offense does not necessarily determine whether an offender will make good on probation, but that this depends upon

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other individual factors, such as character, mental condition and attitude, habits and home conditions. The determination of these factors calls for the finest judgment of the court, unhampered by artificial classification.

Another feature of the Massachusetts system which has not as yet been generally followed is the establishment of state supervision. This principle was incorporated in the first state-wide probation law which was enacted in Massachusetts in 1880. This law applied only to the city of Boston. The law of 1880 provided that any city or town might establish the office of salaried probation officer. The appointment was to be certified to the state prison commissioners and every probation officer was required to make a monthly report to the commissioners with such information as they might require. From that time until the establishment of the Massachusetts Commission on Probation in 1908, state supervision and direction of the developing probation work in that state was carried on by the prison commissioners. The commission on probation since its establishment has been an effective force in developing and co-ordinating the work of the probation officers throughout the state.

The first independent state commission for the supervision of probation work was established, however, in the state of New York in 1907, one year before the Massachusetts commission. The first probation law in New York was enacted in 1901, but the system at first developed slowly and irregularly. In some places good work was done, in some places bad, in most places not any. The payment of salaries to probation officers was permissive and very few communities took advantage of the law. They had not been in the habit of spending money for this purpose, and so without special campaigns in each community the courts went along on the old volunteer basis.

Under the leadership of some of the ablest social workers of the state the appointment of a special legislative commission to study the growing probation work in the courts of the state, both juvenile and adult, was secured. This commission made a thorough investigation and brought out a comprehensive report. Little effective probation work was found and no uniformity of methods. In its report to the governor in 1906 this commission said: "The appointment of probation officers has been carried into effect in but few of the courts." Describing the irregularity and inconsistency of the work then done it said: "The underlying weakness of the probation system as now conducted is to be found in the very large number of courts possessing the power of appointment of probation officers and in the absence of

any supervision, co-ordination or organization of the work of probation officers, except such as may be exercised by the courts to which they are attached. There are practically as many systems of probation as there are courts using the probation law."

To aid in curing these evils and to extend the probation service to all courts of the state, this commission recommended central state supervision. Their report said: "We are, therefore, strongly of the opinion that, while probation work must always be permitted a considerable degree of flexibility to meet local conditions and individual needs, there should be provided, nevertheless, some form of central oversight. This should involve the collection of information in regard to the extent to which probation is utilized in different portions of the state, from time to time, the manner in which probation work is carried on, and the value of the results secured. It should include the authority to make formal and detailed investigations of probation work in any given court or locality, when such are deemed advisable; it should provide for the making of suggestions to the legislature from time to time for the improvement of the probation system, and for recommendations from time to time to public authorities, judicial and executive, concerned in the administration of probation; it should involve the promotion of probation work in those localities in which it is not availed of."

As a result of the report of this commission a bill was introduced in the legislature and, with the active sympathy and support of Governor Hughes, was passed in 1907, and a permanent commission was created, composed of seven members, four of whom are appointed by the governor for terms of four years, one is designated by the state board of charities, one by the state prison commission, and the commissioner of education, member *ex-officio*. This commission, which is unpaid, was authorized to employ a secretary and other employes, was required to meet regularly, to "exercise general supervision over the work of probation officers," to "keep informed as to their work," to improve and extend the probation system, to collect and publish information thereon and to make recommendations. It was not given authority to appoint or remove any probation officers. Its authority is by way of investigation and recommendation, and it is sometimes the case that in a democratic community the power of recommendation may accomplish greater results than any mandatory power.

The commission has recently completed ten years of active service. What has been accomplished? For one thing a phenomenal increase in the use of probation has been brought about through

the work of the commission. In 1907 there were but 1,672 persons of all ages on probation with only 35 salaried probation officers in the state; at the close of 1917 there are 14,875 persons on probation, with 201 salaried officers in addition to about 300 volunteers.

The commission has supported much legislation for improving the system, among other laws obtaining one providing for country probation officers authorized to serve not only in the higher courts but in the courts of towns and villages, thereby establishing for the first time in the state, rural probation.

It has been again proved in New York State that the passage of a law does not necessarily bring enforcement with it and sometimes is only the first step in bringing about a reform. The passage of the probation law did not mean the establishment of effective probation throughout the state. That has been a slow, tedious process, not yet completed but far advanced in comparison with the situation of ten years ago. Every year since the New York Probation Commission started work it has reported new officers and new localities establishing probation offices. More than half the counties of the state, including all the larger ones, have county probation offices. In the larger cities there is now for the first time in sight an adequate number of probation officers.

The value of a state probation department or bureau work does not stop with its extension work. More important still is its work of standardization and public education. It should furnish information regarding the probation law and methods to all who apply and publish reports and educational literature, conduct conferences, and, most important of all, endeavor by personal visitation to improve the quality of the work which is being done and establish standards. This can only be done by frequent and direct contact with the probation offices. The visiting and investigation of probation offices by a state supervisory department or bureau is as necessary to get results in this field as is the inspection of institutions.

It cannot be contended that probation work is merely local work and so should be taken care of by local authorities. The probation work in a given community affects the entire state. If it is badly done criminals will go out from that locality into other part of the state or other states, an increasing menace, and the public of other states will pay for unnecessary institutional commitments. If it is well done good citizens will be sent out and the cost of maintaining penal institutions, both to the local community and to the entire state, will be lessened. In the state of New York it has been shown there has been a marked

falling off in the population of correctional institutions as compared with the increase in general population, traceable in a considerable degree to the growth of probation. It, therefore, seems clear that as a matter of simple economy as well as to promote the general welfare the state has a duty and an opportunity in promoting probation. Its establishment and regulation should not be left to local communities alone.

Divergent methods prevail in various states in regard to the appointment of probation officers. In the small states of Rhode Island and Vermont there are state probation officers, appointed by and serving under the direction of state boards of charities. The state probation officer in turn appoints all probation officers throughout the state. In Utah there is a Juvenile Court commission which appoints both judges and probation officers and supervises their work. In Wisconsin, also, there is a state probation officer who serves under the state board of control. His duties, however, are to supervise probation work and not to appoint local probation officers.

In the great majority of the states, probation officers are appointed by the judges of the courts in which they serve. In a few states, particularly New York and New Jersey, all probation officers are under the civil service. In Massachusetts the officers are not under civil service but the state commission on probation conducts unofficial examinations and furnishes judges with recommended lists. The experience of New York State with the appointment of all probation officers under the civil service has been highly satisfactory. The majority of these examinations are conducted with the assistance and co-operation of the state probation commission. Oral examinations are used in all cases. Practical knowledge of the duties of the office, experience in related fields and personality determine the ratings. Political appointments have been almost entirely eliminated.

Much might be said for the appointment of probation officers by a state probation commission or department in order to bring about uniformity and a higher grade of officers. The plan has not yet, however, been tried in any large state, but whether the state agency is given power to appoint or merely to supervise probation officers, as in New York and Massachusetts, one of its most important functions has been found to be that of watching appointments, suggesting candidates and co-operating with the authorities who actually make appointments so as to improve personnel, which is the all-important thing.

Experience has shown that in most courts the judges alone cannot or will not give adequate supervision to the work of probation offi-

cers. Politics enter in; many judges are not good administrators; in the minor courts their duties are engrossing and arduous. While no state supervisory department is going to prevent the evils which occur when judges are incompetent or lack independence, it has been found that state supervision can go a long way toward offsetting these evils and has not only assisted in getting better appointments but has helped greatly in holding probation officers to higher standards in their work. Not all judges are alike. Most judges, I believe, are sincerely desirous of making their probation department contribute as much as possible toward human welfare. Such judges generally welcome the assistance of a state probation commission and co-operate to the fullest extent.

The idea of state supervision of probation is new. As yet only two states have independent commissions charged exclusively with the supervision of all probation work. Besides these the states of Connecticut, New Hampshire, Colorado, Michigan and Minnesota require probation officers to report to state boards of charities and corrections or similar departments. In other states the need has been felt for effective state control or supervision.

The National Probation Association at its last conference adopted the following resolution:

Whereas, The service of state probation commissions in the states of New York and Massachusetts has gone far to promote the extension of probation and to give uniformity and efficiency to its administration, and

Whereas, Probation has advanced from a localized institution to a place of great accountability in the correctional system of many states and its extension and standardization are vital to the humane and effective application of the criminal law; be it

Resolved, That the National Probation Association urges upon state governments the creation of probation commissions to extend and supervise probation, and pledges its support to the probation officers and other agencies for humane advance in their efforts to secure the establishment of such commissions.

In the development of efficient methods for dealing with all the dependent and delinquent classes, not only state commissions, but a probation bureau in connection with one of the federal departments, has been proposed and could perform extremely valuable services in developing and co-ordinating the system throughout the nation.